

Kaplan, J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

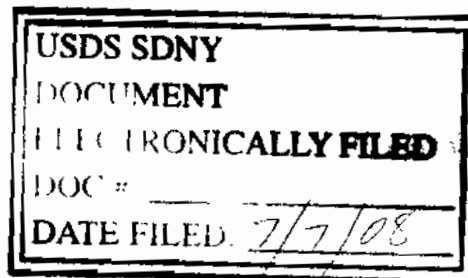
BIOVAIL CORPORATION,
EUGENE N. MELNYK,
BRIAN CROMBIE,
JOHN MISZUK, and
KENNETH G. HOWLING

Defendants.
----- x

No. 08 CIV 02979 (LAK)(GWG)

ECF Case

**STIPULATION AND ORDER GOVERNING
EXPERT REPORTS, DISCLOSURES AND DISCOVERY**



IT IS HEREBY STIPULATED AND AGREED, by and among the parties to the above-captioned action presently pending before the Hon. Lewis A. Kaplan in the United States District Court for the Southern District of New York (the "Action"), through their counsel, that the following provisions of this Order shall govern expert reports, disclosures and discovery in the Action.

1. Notwithstanding the language in Rule 26(a)(2)(B) (or any other potentially applicable rule) regarding the "data or other information considered" by the expert in rendering the report or forming the expert's opinions, the parties shall not be required to disclose or produce in discovery or at trial any:

(a) drafts of expert reports, regardless of whether such drafts have been disclosed or otherwise transmitted to in-house or outside counsel, employees, or consultants for the party or parties who have retained such expert;

(b) notes or other documents prepared by the expert, or his or her staff, unless relied upon as a basis for his or her opinions;

(c) documents or information constituting or reflecting oral or written communications between the expert and his or her staff, unless relied upon as a basis for his or her opinions; or

(d) documents or information constituting or reflecting oral or written communications between the expert and the party, parties, or counsel who retained the expert in this action, unless relied upon as a basis for his or her opinions.

2. Experts, their staff and counsel are free to discard, and need not preserve, copies of any of the documents listed in paragraphs 1(a) through 1(d) above, unless relied upon as a basis for his or her opinions.

3. Each expert shall be required to (i) identify all documents produced by any party or nonparty in discovery and all deposition testimony on which he or she has relied as a basis for his or her opinions and (ii) identify and (if requested) produce copies of all other documents, deposition testimony or other information not included in clause (i) above on which he or she has relied as a basis for his or her opinions. Parties shall identify the documents referenced in 3(i) by "Bates" numbers and shall identify the deposition testimony by deponent name.

4. Any expert may be examined at deposition or trial with respect to documents or information on which he or she did not rely as a basis for his or her opinions, other than the documents or information listed in Paragraphs 1(a) -- 1(d) hereof.

This Stipulation may be executed in counterparts.

July 2
Date: ~~June 30~~, 2008
New York, New York

By: 

Mark K. Schonfeld
Andrew M. Calamari
Robert J. Keyes
Todd D. Brody
Celeste A. Chase
Catherine Smith
Securities and Exchange Commission
3 World Financial Center
New York, NY 10281-1022
Tel: (212) 336-1120

*Attorneys for Plaintiff Securities and
Exchange Commission*

By: _____

Gregory P. Joseph (GJ-1210)
Mara Leventhal (ML-1218)
Gregory P. Joseph Law Offices LLC
485 Lexington Avenue, 30th Floor
New York, NY 10017
Tel: (212) 407-1200

Lanny A. Breuer
Dennis B. Auerbach (admitted *pro hac vice*)
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 662-6000

Attorneys for Defendant Eugene N. Melnyk

By: _____

David M. Becker
Shawn J. Chen
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Tel: (202) 974-1500

Attorneys for Defendant Brian Crombie

By: _____

Bruce Hiler (admitted *pro hac vice*)
Jodi Avergun
Cadwalader, Wickersham & Taft LLP
1201 F Street, NW
Washington, DC 20004
Tel: (202) 862-2200

Attorneys for Defendant John Miszuk

This Stipulation may be executed in counterparts.

Date: June 30, 2008
New York, New York

By: _____

Mark K. Schonfeld
Andrew M. Calamari
Robert J. Keyes
Todd D. Brody
Celeste A. Chase
Catherine Smith
Securities and Exchange Commission
3 World Financial Center
New York, NY 10281-1022
Tel: (212) 336-1120

*Attorneys for Plaintiff Securities and
Exchange Commission*

By: _____

Gregory P. Joseph (GJ-1210)
Mara Leventhal (ML-1218)
Gregory P. Joseph Law Offices LLC
485 Lexington Avenue, 30th Floor
New York, NY 10017
Tel: (212) 407-1200

Lanny A. Breuer
Dennis B. Auerbach (admitted *pro hac vice*)
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 662-6000

Attorneys for Defendant Eugene N. Melnyk

By: Shawn Chen

David M. Becker
Shawn J. Chen
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Tel: (202) 974-1500

Attorneys for Defendant Brian Crombie

By: _____

Bruce Hiler (admitted *pro hac vice*)
Jodi Avergun
Cadwalader, Wickersham & Taft LLP
1201 F Street, NW
Washington, DC 20004
Tel: (202) 862-2200

Attorneys for Defendant John Miszuk

This Stipulation may be executed in counterparts.

Date: June 30, 2008
New York, New York

By: _____

Mark K. Schonfeld
Andrew M. Calamari
Robert J. Keyes
Todd D. Brody
Celeste A. Chase
Catherine Smith
Securities and Exchange Commission
3 World Financial Center
New York, NY 10281-1022
Tel: (212) 336-1120

*Attorneys for Plaintiff Securities and
Exchange Commission*

By:  _____

Gregory P. Joseph (GJ-1210)
Mara Leventhal (ML-1218)
Gregory P. Joseph Law Offices LLC
485 Lexington Avenue, 30th Floor
New York, NY 10017
Tel: (212) 407-1200

Lanny A. Breuer
Dennis B. Auerbach (admitted *pro hac vice*)
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 662-6000

Attorneys for Defendant Eugene N. Melnyk

By: _____

David M. Becker
Shawn J. Chen
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Tel: (202) 974-1500

Attorneys for Defendant Brian Crombie

By: _____

Bruce Hiler (admitted *pro hac vice*)
Jodi Avergun
Cadwalader, Wickersham & Taft LLP
1201 F Street, NW
Washington, DC 20004
Tel: (202) 862-2200

Attorneys for Defendant John Miszuk

This Stipulation may be executed in counterparts.

Date: June 30, 2008
New York, New York

By: _____

Mark K. Schonfeld
Andrew M. Calamari
Robert J. Keyes
Todd D. Brody
Celeste A. Chase
Catherine Smith
Securities and Exchange Commission
3 World Financial Center
New York, NY 10281-1022
Tel: (212) 336-1120

*Attorneys for Plaintiff Securities and
Exchange Commission*

By: _____

David M. Becker
Shawn J. Chen
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
Tel: (202) 974-1500

Attorneys for Defendant Brian Crombie

By: _____

Gregory P. Joseph (GJ-1210)
Mara Leventhal (ML-1218)
Gregory P. Joseph Law Offices LLC
485 Lexington Avenue, 30th Floor
New York, NY 10017
Tel: (212) 407-1200

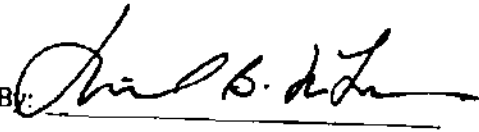
Lanny A. Breuer
Dennis B. Auerbach (admitted *pro hac vice*)
Covington & Burling LLP
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Tel: (202) 662-6000

Attorneys for Defendant Eugene N. Melnyk

By:  _____

Bruce Niler (admitted *pro hac vice*)
Jodi Averbun
Cadwalader, Wickersham & Taft LLP
1201 F Street, NW
Washington, DC 20004
Tel: (202) 862-2200

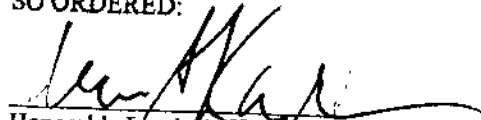
Attorneys for Defendant John Miszuk

By: 

Carmen J. Lawrence
Michael B. de Leeuw
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004-1980
Tel: (212) 859-8000

Attorneys for Defendant Kenneth G. Howling

SO ORDERED:


Honorable Lewis A. Kaplan
United States District Judge

Dated: 7/2/08